

the private foundation for purposes of section 507(a)(2) even though tax is imposed upon one or more foundation managers rather than upon the foundation itself.

(4) For purposes of section 507(a)(2), the failure to correct the act or acts (or failure or failures to act) which gave rise to liability for tax under any section of chapter 42 by the close of the correction period for such section may be a willful and flagrant act (or failure to act).

(5) No motive to avoid the restrictions of the law or the incurrence of any tax is necessary to make an act (or failure to act) willful. However, a foundation's act (or failure to act) is not willful if the foundation (or a foundation manager, if applicable) does not know that it is an act of self-dealing, a taxable expenditure, or other act (or failure to act) to which chapter 42 applies. Rules similar to the regulations under chapter 42 (see, for example, § 53.4945-1(a)(2)(iii) of this chapter) shall apply in determining whether a foundation or a foundation manager *knows* that an act (or failure to act) is an act of self-dealing a taxable expenditure or other such act (or failure to act).

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§ 1.507-2 Special rules; transfer to, or operation as, public charity.

(a) *Transfer to public charities*—(1) *General rule.* Under section 507(b)(1)(A) a private foundation, with respect to which there have not been either willful repeated acts (or failures to act) or a willful and flagrant act (or failure to act) giving rise to liability for tax under Chapter 42, may terminate its private foundation status by distributing all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months immediately preceding such distribution. Because section 507(a) does not apply to such a termination, a private foundation which makes such a termination is not required to give the notification described in section

507(a)(1). A private foundation that terminates its private foundation status under section 507(b)(1)(A) does not incur tax under section 507(c) and, therefore, no abatement of such tax under section 507(g) is required.

(2) *Effect of current ruling.* A private foundation seeking to terminate its private foundation status pursuant to section 507(b)(1)(A) may rely on a ruling or determination letter issued to a potential distributee organization that such distributee organization is an organization described in section 170(b)(1)(A)(i), 170(b)(1)(A)(ii), 170(b)(1)(A)(iii), 170(b)(1)(A)(iv), 170(b)(1)(A)(v), or 170(b)(1)(A)(vi) in accordance with the provisions of § 1.509(a)-7.

(3) *Organizations described in more than one clause of section 170(b)(1)(A).* For purposes of this paragraph and section 507(b)(1)(A), the parenthetical term “other than in clauses (vii) and (viii)” shall refer only to an organization that is described only in section 170(b)(1)(A)(vii) or section 170(b)(1)(A)(viii). Thus, an organization described in section 170(b)(1)(A)(i), 170(b)(1)(A)(ii), 170(b)(1)(A)(iii), 170(b)(1)(A)(iv), 170(b)(1)(A)(v), or 170(b)(1)(A)(vi) will not be precluded from being a distributee described in section 507(b)(1)(A) merely because it also appears to meet the description of an organization described in section 170(b)(1)(A)(vii) or section 170(b)(1)(A)(viii).

(4) *Applicability of Chapter 42 to foundations terminating under section 507(b)(1)(A).* An organization that terminates its private foundation status pursuant to section 507(b)(1)(A) will remain subject to the provisions of Chapter 42 until the distribution of all of its net assets to distributee organizations described in section 507(b)(1)(A) has been completed.

(5) *Return required from organizations terminating private foundation status under section 507(b)(1)(A)*—(i) An organization that terminates its private foundation status under section 507(b)(1)(A) is required to file a return under the provisions of section 6043(b).

(ii) An organization that terminates its private foundation status under section 507(b)(1)(A) is not required to comply with section 6104(d) for the taxable year in which such termination occurs.

(6) *Distribution of net assets.* A private foundation will meet the requirement to “distribute all of its net assets” within the meaning of section 507(b)(1)(A) only if it transfers all of its right, title, and interest in and to all of its net assets to one or more organizations referred to in section 507(b)(1)(A).

(7) *Effect of restrictions and conditions upon distributions of net assets—(i) In general.* In order to effectuate a transfer of “all of its right, title, and interest in and to all of its net assets” within the meaning of paragraph (a)(6) of this section, a transferor private foundation may not impose any material restriction or condition that prevents the transferee organization referred to in section 507(b)(1)(A) (herein sometimes referred to as the “public charity”) from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes. Whether or not a particular condition or restriction imposed upon a transfer of assets is material (within the meaning of this paragraph (a)(7)) must be determined from all of the facts and circumstances of the transfer. Some of the more significant facts and circumstances to be considered in making such a determination are—

(A) Whether the public charity (including a participating trustee, custodian, or agent in the case of a community trust) is the owner in fee of the assets it receives from the private foundation;

(B) Whether such assets are to be held and administered by the public charity in a manner consistent with one or more of its exempt purposes;

(C) Whether the governing body of the public charity has the ultimate authority and control over such assets, and the income derived therefrom; and

(D) Whether, and to what extent, the governing body of the public charity is organized and operated so as to be independent from the transferor.

(ii) *Independent governing body.* As provided in paragraph (a)(7)(i)(D) of this section, one of the more signifi-

cant facts and circumstances to be considered in making the determination whether a particular condition or restriction imposed upon a transfer of assets is material within the meaning of this paragraph (a)(7) is whether, and the extent to which, the governing body is organized and operated so as to be independent from the transferor. In turn, the determination as to such factor must be determined from all of the facts and circumstances. Some of the more significant facts and circumstances to be considered in making such a determination are—

(A) Whether, and to what extent, members of the governing body are comprised of persons selected by the transferor private foundation or disqualified persons with respect thereto or are themselves such disqualified persons;

(B) Whether, and to what extent, members of the governing body are selected by public officials acting in their capacities as such; and

(C) How long a period of time each member of the governing body may serve in such capacity. In the case of a transfer that is to a community trust, the community trust shall meet this paragraph (a)(7)(ii)(C) if—

(1) Its governing body is comprised of members who may serve a period of not more than ten consecutive years; and

(2) Upon completion of a period of service (beginning before or after the date of transfer), no member may serve again within a period consisting of the lesser of five years or the number of consecutive years the member has immediately completed serving.

(iii) *Factors not adversely affecting determination.* The presence of some or all of the following factors will not be considered as preventing the transferee “from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes” (within the meaning of paragraph (a)(7)(i) of this section):

(A) *Name.* The fund is given a name or other designation which is the same as or similar to that of the transferor private foundation or otherwise memorializes the creator of the foundation or his family.

(B) *Purpose.* The income and assets of the fund are to be used for a designated

purpose or for one or more particular section 509(a)(1), section 509(a)(2), or section 509(a)(3) organization, and such use is consistent with the charitable, educational, or other basis for the exempt status of the public charity under section 501(c)(3).

(C) *Administration.* The transferred assets are administered in an identifiable or separate fund, some or all of the principal of which is not to be distributed for a specified period, if the public charity (including a participating trustee, custodian, or agent in the case of a community trust) is the legal and equitable owner of the fund and the governing body exercises ultimate and direct authority and control over such fund, as, for example, a fund to endow a chair at a university or a medical research fund at a hospital. In the case of a community trust, the transferred assets must be administered in or as a component part of the community trust within the meaning of § 1.170A-9(f)(11).

(D) *Restrictions on disposition.* The transferor private foundation transfers property the continued retention of which by the transferee is required by the transferor if such retention is important to the achievement of charitable or other similar purposes in the community because of the peculiar features of such property, as, for example, where a private foundation transfers a woodland preserve which is to be maintained by the public charity as an arboretum for the benefit of the community. Such a restriction does not include a restriction on the disposition of an investment asset or the distribution of income.

(iv) *Adverse factors.* The presence of any of the following factors will be considered as preventing the transferee “from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes” (within the meaning of paragraph (a)(7)(i) of this section):

(A) *Distributions.* (1) With respect to distributions made after April 19, 1977, the transferor private foundation, a disqualified person with respect thereto, or any person or committee designated by, or pursuant to the terms of an agreement with, such a person (hereinafter referred to as donor), re-

serves the right, directly or indirectly, to name (other than by designation in the instrument of transfer of particular section 509(a)(1), section 509(a)(2), or section 509(a)(3) organizations) the persons to which the transferee public charity must distribute, or to direct the timing of such distributions (other than by direction in the instrument of transfer that some or all of the principal, as opposed to specific assets, not be distributed for a specified period) as, for example, by a power of appointment. The IRS will examine carefully whether the seeking of advice by the transferee from, or the giving of advice by, any donor after the assets have been transferred to the transferee constitutes an indirect reservation of a right to direct such distributions. In any such case, the reservation of such a right will be considered to exist where the only criterion considered by the public charity in making a distribution of income or principal from a donor's fund is advice offered by the donor. Whether there is a reservation of such a right will be determined from all of the facts and circumstances, including, but not limited to, the factors contained in paragraphs (a)(7)(iv)(A)(2) and (a)(7)(iv)(A)(3) of this section.

(2) The presence of some or all of the following factors will indicate that the reservation of a right to direct distributions does not exist:

(i) There has been an independent investigation by the staff of the public charity evaluating whether the donor's advice is consistent with specific charitable needs most deserving of support by the public charity (as determined by the public charity).

(ii) The public charity has promulgated guidelines enumerating specific charitable needs consistent with the charitable purposes of the public charity and the donor's advice is consistent with such guidelines.

(iii) The public charity has instituted an educational program publicizing to donors and other persons the guidelines enumerating specific charitable needs consistent with the charitable purposes of the public charity.

(iv) The public charity distributes funds in excess of amounts distributed from the donor's fund to the same or

similar types of organizations or charitable needs as those recommended by the donor.

(v) The public charity's solicitations (written or oral) for funds specifically state that such public charity will not be bound by advice offered by the donor.

(3) The presence of some or all of the following factors will indicate the reservation of a right to direct distributions does exist:

(i) The solicitations (written or oral) of funds by the public charity state or imply, or a pattern of conduct on the part of the public charity creates an expectation, that the donor's advice will be followed.

(ii) The advice of a donor (whether or not restricted to a distribution of income or principal from the donor's trust or fund) is limited to distributions of amounts from the donor's fund, and the factors described in paragraph (a)(7)(iv)(A)(2)(i) or paragraph (a)(7)(iv)(A)(2)(ii) of this section are not present.

(iii) Only the advice of the donor as to distributions of such donor's fund is solicited by the public charity and no procedure is provided for considering advice from persons other than the donor with respect to such fund.

(iv) For the taxable year and all prior taxable years the public charity follows the advice of all donors with respect to their funds substantially all of the time.

(B) *Other action or withholding of action.* The terms of the transfer agreement, or any expressed or implied understanding, required the public charity to take or withhold action with respect to the transferred assets which is not designed to further one or more of the exempt purposes of the public charity, and such action or withholding of action would, if performed by the transferor private foundation with respect to such assets, have subjected the transferor to tax under Chapter 42 (other than with respect to the minimum investment return requirement of section 4942(e)).

(C) *Assumption of leases, contractual obligations, or liabilities.* The public charity assumes leases, contractual obligations, or liabilities of the transferor private foundation, or takes the

assets thereof subject to such liabilities (including obligations under commitments or pledges to donees of the transferor private foundation), for purposes inconsistent with the purposes or best interests of the public charity, other than the payment of the transferor's Chapter 42 taxes incurred prior to the transfer to the public charity to the extent of the value of the assets transferred.

(D) *Retention of investment assets.* The transferee public charity is required by any restriction or agreement (other than a restriction or agreement imposed or required by law or regulatory authority), express or implied, to retain any securities or other investment assets transferred to it by the private foundation. In a case where such transferred assets consistently produce a low annual return of income, the IRS will examine carefully whether the transferee is required by any such restriction or agreement to retain such assets.

(E) *Right of first refusal.* An agreement is entered into in connection with the transfer of securities or other property which grants directly or indirectly to the transferor private foundation or any disqualified person with respect thereto a right of first refusal with respect to the transferred securities or other property when and if disposed of by the public charity, unless such securities or other property was acquired by the transferor private foundation subject to such right of first refusal prior to October 9, 1969.

(F) *Relationships.* An agreement is entered into between the transferor private foundation and the transferee public charity which establishes irrevocable relationships with respect to the maintenance or management of assets transferred to the public charity, such as continuing relationships with banks, brokerage firms, investment counselors, or other advisors with regard to the investments or other property transferred to the public charity (other than a relationship with a trustee, custodian, or agent for a community trust

acting as such). The transfer of property to a public charity subject to contractual obligations which were established prior to November 11, 1976, between the transferor private foundation and persons other than disqualified persons with respect to such foundation will not be treated as prohibited under the preceding sentence, but only if such contractual obligations were not entered into pursuant to a plan to terminate the private foundation status of the transferor under section 507(b)(1)(A) and if the continuation of such contractual obligations is in the best interests of the public charity.

(G) *Other conditions.* Any other condition is imposed on action by the public charity which prevents it from exercising ultimate control over the assets received from the transferor private foundation for purposes consistent with its exempt purposes.

(v) *Examples.* The provisions of this paragraph (a)(7) may be illustrated by the following examples:

Example 1. The M Private Foundation transferred all of its net assets to the V Cancer Institute, a public charity described in section 170(b)(1)(A)(iii). Prior to the transfer, M's activities consisted of making grants to hospitals and universities to further research into the causes of cancer. Under the terms of the transfer, V is required to keep M's assets in a separate fund and use the income and principal to further cancer research. Although the assets may be used only for a limited purpose, this purpose is consistent with and in furtherance of V's exempt purposes, and does not prevent the transfer from being a distribution for purposes of section 507(b)(1)(A).

Example 2. The N Private Foundation transferred all of its net assets to W University, a public charity described in section 170(b)(1)(A)(ii). Under the terms of the transfer, W is required to use the income and principal to endow a chair at the university to be known as the "John J. Doe Memorial Professorship," named after N's creator. Although the transferred assets are to be used for a specified purpose by W, this purpose is in furtherance of W's exempt educational purposes, and there are no conditions on investment or reinvestment of the principal or income. The use of the name of the foundation's creator for the chair is not a restriction which would prevent the transfer from being a distribution for purposes of section 507(b)(1)(A).

Example 3. The O Private Foundation transferred all of its net assets to X Bank as trustee for the Q Community Trust, a com-

munity trust that is a public charity described in section 170(b)(1)(A)(vi). Under the terms of the transfer, X is to hold the assets in trust for Q and is directed to distribute the income annually to the Y Church, a public charity described in section 170(b)(1)(A)(i). The distribution of income to Y Church is consistent with Q's exempt purposes. If the trust created by this transfer otherwise meets the requirements of § 1.170A-9(f)(11) as a component part of the Q Community Trust, the assets transferred by O to X will be treated as distributed to one or more public charities within the meaning of section 507(b)(1)(A). The direction to distribute the income to Y Church meets the conditions of paragraph (a)(7)(iii)(B) of this section and will therefore not disqualify the transfer under section 507(b)(1)(A).

Example 4. (i) The P Private Foundation transferred all of its net assets to Z Bank as trustee for the R Community Trust, a community trust that is a public charity described in section 170(b)(1)(A)(vi). Under the terms of the transfer, Z is to hold the assets in trust for R and distribute the income to those public charities described in section 170(b)(1)(A)(i) through (b)(1)(A)(vi) that are designated by B, the creator of P. R's governing body has no authority during B's lifetime to vary B's direction. Under the terms of the transfer, it is intended that Z retain the transferred assets in their present form for a period of 20 years, or until the date of B's death if it occurs before the expiration of such period. Upon the death of B, R will have the power to distribute the income to such public charities as it selects and may dispose of the corpus as it sees fit.

(ii) Under paragraph (a)(7)(iv)(A) or paragraph (a)(7)(iv)(D) of this section, as a result of the restrictions imposed with respect to the transferred assets, there has been no distribution of all P's net assets within the meaning of section 507(b)(1)(A) at the time of the transfer. In addition, P has not transferred its net assets to a component part of R Community Trust, but rather to a separate trust described in § 1.170A-9(f)(12).

(b) *Operation as a public charity—(1) In general.* Under section 507(b)(1)(B), an organization can terminate its private foundation status if the organization—

(i) Meets the requirements of section 509(a)(1), section 509(a)(2) or section 509(a)(3) for a continuous period of 60 calendar months beginning with the first day of any taxable year that begins after December 31, 1969;

(ii) In compliance with section 507(b)(1)(B)(ii) and paragraph (b)(3) of this section, properly notifies the IRS, in such manner as may be provided by

published guidance, publication, form or instructions, before the commencement of such 60-month period, that it is terminating its private foundation status; and

(iii) Properly establishes immediately after the expiration of such 60-month period that such organization has complied with the requirements of section 509(a)(1), section 509(a)(2) or section 509(a)(3) during the 60-month period, in the manner described in paragraph (b)(4) of this section.

(2) *Relationship of section 507(b)(1)(B) to sections 507(a), 507(c), and 507(g).* Because section 507(a) does not apply to a termination described in section 507(b)(1)(B), a private foundation's notification that it is commencing a termination pursuant to section 507(b)(1)(B) will not be treated as a notification described in section 507(a) even if the private foundation does not successfully terminate its private foundation status pursuant to section 507(b)(1)(B). A private foundation that terminates its private foundation status under section 507(b)(1)(B) does not incur tax under section 507(c) and, therefore, no abatement of such tax under section 507(g) is required.

(3) *Notification of termination.* In order to comply with the requirements under section 507(b)(1)(B)(ii), an organization shall before the commencement of the 60-month period under section 507(b)(1)(B)(i) notify the IRS, in such manner as may be provided by published guidance, publication, form or instructions, of its intention to terminate its private foundation status. Such notification shall contain the following information—

- (i) The name and address of the private foundation;
- (ii) Its intention to terminate its private foundation status;
- (iii) The Code section under which it seeks classification (section 509(a)(1), section 509(a)(2) or section 509(a)(3));
- (iv) If section 509(a)(1) is applicable, the clause of section 170(b)(1)(A) involved;
- (v) The date its regular taxable year begins; and
- (vi) The date of commencement of the 60-month period.

(4) *Establishment of termination.* In order to comply with the requirements

under section 507(b)(1)(B)(iii), an organization shall within 90 days after the expiration of the 60-month period file such information with the IRS, in such manner as may be provided by published guidance, publication, form or instructions, as is necessary to make a determination as to the organization's status as an organization described under section 509(a)(1), section 509(a)(2) or section 509(a)(3) and the related regulations. See paragraph (c) of this section as to the information required to be submitted under this paragraph (b)(4).

(5) *Incomplete information.* The failure to supply, within the required time, all of the information required by paragraph (b)(3) or paragraph (b)(4) of this section is not alone sufficient to constitute a failure to satisfy the requirements of section 507(b)(1)(B). If the information that is submitted within the required time is incomplete and the organization supplies the necessary additional information at the request of the Commissioner within the additional time period allowed by him, the original submission will be considered timely.

(6) *Application of special rules and filing requirements.* An organization that has terminated its private foundation status under section 507(b)(1)(B) is not required to comply with the special rules set forth in sections 508(a) and 508(b). Such organization is also not required to file a return under the provisions of section 6043(b) by reason of termination of its private foundation status under the provisions of section 507(b)(1)(B).

(7) *Extension of time to assess deficiencies.* If a private foundation files a notification (described in paragraph (b)(3) of this section) that it intends to begin a 60-month termination pursuant to section 507(b)(1)(B) and does not file a request for an advance ruling pursuant to paragraph (d) of this section, such private foundation may file with the notification described in paragraph (b)(3) of this section a consent under section 6501(c)(4) to the effect that the period of limitation upon assessment under section 4940 for any taxable year within the 60-month termination period shall not expire prior to one year after the date of expiration of the time

prescribed by law for the assessment of a deficiency for the last taxable year within the 60-month period. Such consents, if filed, will ordinarily be accepted by the Commissioner. See paragraph (e)(3) of this section for an illustration of the procedure required to obtain a refund of the tax imposed by section 4940 in a case where such a consent is not in effect.

(c) *Sixty-month terminations*—(1) *Method of determining normal sources of support.* (i) In order to meet the requirements of section 507(b)(1)(B) for the 60-month termination period as a section 509(a)(1) or section 509(a)(2) organization, an organization must meet the requirements of section 509(a)(1) or section 509(a)(2), as the case may be, for a continuous period of at least 60 calendar months. In determining whether an organization seeking status under section 509(a)(1) as an organization described in section 170(b)(1)(A)(iv) or section 170(b)(1)(A)(vi) or under section 509(a)(2) normally meets the requirements set forth under such sections, support received in taxable years prior to the commencement of the 60-month period shall not be taken into consideration, except as otherwise provided in this section.

(ii) For purposes of section 507(b)(1)(B), an organization will be considered to be a section 509(a)(1) organization described in section 170(b)(1)(A)(vi) for a continuous period of 60 calendar months only if the organization satisfies the provisions of § 1.170A-9(f), other than § 1.170A-9(f)(4)(v), based upon aggregate data for such entire period. The calculation of public support shall be made over the period beginning with the date of the commencement of the 60-month period, and ending with the last day of the 60-month period.

(iii) For purposes of section 507(b)(1)(B), an organization will be considered to be a section 509(a)(2) organization only if such organization meets the support requirements set forth in sections 509(a)(2)(A) and 509(a)(2)(B) and the related regulations, other than § 1.509(a)-3(d), for the continuous period of 60 calendar months prescribed under section 507(b)(1)(B). The calculation of public support shall be made over the period beginning with

the date of the commencement of the 60-month period, and ending with the last day of the 60-month period.

(2) *Organizational and operational tests.* In order to meet the requirements of section 507(b)(1)(B) for the 60-month termination period as an organization described in section 170(b)(1)(A)(i), 170(b)(1)(A)(ii), 170(b)(1)(A)(iii), 170(b)(1)(A)(iv), or 170(b)(1)(A)(v) or section 509(a)(3), as the case may be, an organization must meet the requirements of the applicable provisions for a continuous period of at least 60 calendar months. For purposes of section 507(b)(1)(B), an organization will be considered to be such an organization only if it satisfies the requirements of the applicable provision (including with respect to section 509(a)(3), the organizational and operational test set forth in section 509(a)(3)(A)) at the commencement of such 60-month period and continuously thereafter during such period.

(d) *Advance rulings for 60-month terminations*—(1) *In general.* An organization that files the notification required by section 507(b)(1)(B)(ii) that it is commencing a 60-month termination may obtain an advance ruling from the Commissioner that it can be expected to satisfy the requirements of section 507(b)(1)(B)(i) during the 60-month period. Such an advance ruling may be issued if the organization can reasonably be expected to meet the requirements of section 507(b)(1)(B)(i) during the 60-month period. The issuance of a ruling will be discretionary with the Commissioner.

(2) *Basic consideration.* In determining whether an organization can reasonably be expected (within the meaning of paragraph (d)(1) of this section) to meet the requirements of section 507(b)(1)(B)(i) for the 60-month period, the basic consideration is whether its organizational structure (taking into account any revisions made prior to the beginning of the 60-month period), current or proposed programs or activities, actual or intended method of operation, and current or projected sources of support are such as to indicate that the organization is likely to satisfy the requirements of section 509(a)(1), section 509(a)(2), or section 509(a)(3) and paragraph (c) of this section during the

60-month period. In making such a determination, all pertinent facts and circumstances shall be considered.

(3) *Reliance by grantors and contributors.* For purposes of sections 170, 545(b)(2), 642(c), 4942, 4945, 4966, 2055, 2106(a)(2), and 2522, grants or contributions to an organization which has obtained a ruling referred to in this paragraph will be treated as made to an organization described in section 509(a)(1), section 509(a)(2), or section 509(a)(3), as the case may be, until the IRS publishes notice that such advance ruling is being revoked (such as by publication in the Internal Revenue Bulletin). However, a grantor or contributor may not rely on such an advance ruling if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's failure to meet the requirements of section 509(a)(1), section 509(a)(2), or section 509(a)(3), or acquired knowledge that the IRS had given notice to such organization that its advance ruling would be revoked. Prior to the making of any grant or contribution which allegedly will not result in the grantee's failure to meet the requirements of section 509(a)(1), section 509(a)(2), or section 509(a)(3), a potential grantee organization may request a ruling whether such grant or contribution may be made without such failure. A request for such ruling may be filed by the grantee organization with the IRS. The issuance of such ruling will be at the sole discretion of the Commissioner. The organization must submit all information necessary to make a determination on the factors referred to in paragraph (d)(2) of this section. If a favorable ruling is issued, such ruling may be relied upon by the grantor or contributor of the particular contribution in question for purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 4966, 2055, 2106(a)(2), and 2522.

(4) *Reliance by organization.* An organization obtaining an advance ruling pursuant to this paragraph cannot rely on such a ruling. Consequently, if the organization does not pay the tax imposed by section 4940 for any taxable year or years during the 60-month period, and it is subsequently determined that such tax is due for such year or

years (because the organization did not in fact complete a successful termination pursuant to section 507(b)(1)(B) and was not treated as an organization described in section 509(a)(1), section 509(a)(2), or section 509(a)(3) for such year or years), the organization is liable for interest in accordance with section 6601 if any amount of tax under section 4940 has not been paid on or before the last date prescribed for payment. However, because any failure to pay such tax during the 60-month period (or prior to the revocation of such ruling) is due to reasonable cause, the penalty under section 6651 with respect to the tax imposed by section 4940 shall not apply.

(5) *Extension of time to assess deficiencies.* The advance ruling described in paragraph (d)(1) of this section shall be issued only if such organization's request for an advance ruling is filed with a consent under section 6501(c)(4) to the effect that the period of limitations upon assessment under section 4940 for any taxable year within the advance ruling period shall not expire prior to one year after the date of the expiration of the time prescribed by law for the assessment of a deficiency for the last taxable year within the 60-month period.

(e) *Effect on grantors or contributors and on the organization itself—*(1) *Effect of satisfaction of requirements for termination; treatment during the termination period.* In the event that an organization satisfies the requirements of section 507(b)(1)(B) for termination of its private foundation status during the continuous 60-month period, such organization shall be treated for such entire 60-month period in the same manner as an organization described in section 509(a)(1), section 509(a)(2), or section 509(a)(3), as the case may be.

(2) *Failure to meet termination requirements—*(i) *In general.* Except as otherwise provided in paragraphs (d) and (e)(2)(ii) of this section, any organization that fails to satisfy the requirements of section 507(b)(1)(B) for termination of its private foundation status during the continuous 60-month period shall be treated as a private foundation for the entire 60-month period, for purposes of sections 507 through 509 and Chapter 42, and grants or contributions

to such an organization shall be treated as made to a private foundation for purposes of sections 170, 507(b)(1)(A), 4942, and 4945.

(ii) *Certain 60-month terminations.* Notwithstanding paragraph (e)(2)(i) of this section, if an organization fails to satisfy the requirements of section 509(a)(1), section 509(a)(2), or section 509(a)(3) for the continuous 60-month period but does satisfy the requirements of section 509(a)(1), section 509(a)(2), or section 509(a)(3), as the case may be, for any taxable year or years during such 60-month period, the organization shall be treated as a section 509(a)(1), section 509(a)(2), or section 509(a)(3) organization for such taxable year or years, and grants or contributions made during such taxable year or years shall be treated as made to an organization described in section 509(a)(1), section 509(a)(2), or section 509(a)(3). In addition, sections 507 through 509 and Chapter 42 shall not apply to such organization for any taxable year within such 60-month period for which it does meet such requirements. For purposes of determining whether an organization satisfies the requirements of section 509(a)(1), section 509(a)(2), or section 509(a)(3) for any taxable year in the 60-month period, the calculation of public support shall be made over the period beginning with the date of the commencement of the 60-month period, and ending with the last day of the taxable year being tested. The organization shall not be treated as a section 509(a)(1) or section 509(a)(2) organization for any taxable year during the 60-month period solely by reason of having met a public support test for the preceding year. In addition, the transition rules in §§ 1.170-9(f)(14)(iii) and 1.509(a)-3(n)(iii) shall not apply.

(iii) *Aggregate tax benefit.* For purposes of section 507(d), the organization's aggregate tax benefit resulting from the organization's section 501(c)(3) status shall continue to be computed from the date from which such computation would have been made, but for the notice filed under section 507(b)(1)(B)(ii), except that any taxable year within such 60-month period for which such organization meets the requirements of section 509(a)(1),

section 509(a)(2), or section 509(a)(3) shall be excluded from such computations.

(iv) *Excess business holdings.* See section 4943 and the related regulations for rules relating to decreases in a private foundation's holdings in a business enterprise which are caused by the foundation's failure to terminate its private foundation status after giving the notification for termination under section 507(b)(1)(B)(ii).

(3) *Example.* The provisions of this paragraph (e) may be illustrated by the following example:

Example 1. Y, a calendar year private foundation, notifies the IRS that it intends to terminate its private foundation status by converting into a publicly supported organization described in section 170(b)(1)(A)(vi) and that its 60-month termination period will commence on January 1, 2010. Y does not obtain a ruling described in paragraph (d) of this section. Based upon its support for 2010, Y does not qualify as a publicly supported organization within the meaning of § 1.170A-9(f) and this paragraph for 2010. Consequently, in order to avoid the risks of penalties and interest if Y fails to terminate within the 60-month period, Y files its 2010 return as a private foundation and pays the tax imposed by section 4940. Because a consent (described in paragraph (b)(7) of this section), which would prevent the period of limitations for all years in the 60-month period from expiring, is not in effect, in order to be able to file a claim for refund, Y and the IRS must agree to extend the period of limitation for all taxes imposed under Chapter 42 for 2010. Based on the aggregate data for the entire 60-month period (2010 through 2014), Y does qualify as a publicly-supported organization for the entire 60-month period. Consequently, Y is treated as a publicly-supported organization for the entire 60-month period. Y files a claim for refund for the taxes paid under section 4940 for 2010, and such taxes are refunded.

(f) *Effective/applicability date—(1) Effective date.* These regulations are effective on September 8, 2011.

(2) *Applicability date.* The regulations in this section shall apply to tax years beginning on or after January 1, 2008. For taxable years beginning after December 31, 1969, and beginning before January 1, 2008, see § 1.507-2 (as contained in 26 CFR part 1 revised April 1, 2008).

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